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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

VS.

RADIO CORPORATION OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF THE STATE OF FLORIDA

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LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

VS.

RADIO CORPORATION OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF THE STATE OF FLORIDA

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal, Second District, of the State of Florida, entered in the above entitled case on January 17, 1964, the Supreme Court of Florida having denied Petitioners' petition for a writ of certiorari therein on October 28, 1964.

CITATIONS TO OPINIONS BELOW

The temporary restraining order issued by the Circuit Court of Brevard County, Florida and the said Court's subsequent order dissolving the same are both unreported and are printed in Appendices B and C hereto, *infra*. pp. 5a to 9a. The opinion of the District Court of Appeal, Second District of the State of Florida, printed in Appendix D hereto, *infra*, pp. 10a to 27a, is reported in 160 So. 2d 150. The denial of certiorari by the Supreme Court of Florida, printed in Appendix E hereto, *infra* p. 28a is, as of this date, unreported.

JURISDICTION

The judgment of the District Court of Appeal was entered on January 17, 1964. (Rec. 47). Rehearing was denied on February 11, 1964 (Rec. 67). On October 28, 1964, the Supreme Court of Florida denied Petitioners' petition for a writ of certiorari (Rec. 107). On January 18, 1965, an extension was granted to file a petition for certiorari on or before February 25, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257 (3).

QUESTIONS PRESENTED

1. Whether a state court is pre-empted from enjoining employees covered by a collective bargaining agreement containing provisions against strikes under certain circumstances from crossing a peaceful primary picket line at their own place of employment established by fellow employees whose collective bargaining agreement had expired?

2. Whether a state court, in an action to enjoin an alleged breach of a collective bargaining agreement, is required to follow federal law and, accordingly, is bound by the terms

of the Norris-LaGuardia Act, 47 Stat. 70 *et seq.*, 29 U. S. C. § 101 *et seq.*, limiting the powers of courts to issue injunctions in labor disputes.

STATUTES INVOLVED

The statutory provisions involved are Sections 7, 8 and 13 of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. § § 157, 158, 163 and Section 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 104. They are printed in Appendix A, *infra*, pp. 1a to 4a.

STATEMENT

The instant dispute involves three separate bargaining units of employees working at the same location covered by separate collective bargaining agreements with the same employer (Respondent).[1] On December 18, 1961, Respondent and Petitioner, Local 780, entered into a collective bargaining agreement covering a unit of **film processors** at Respondent's Cape Canaveral (now Kennedy) and Patrick Air Force Base facilities (Rec. 16, 17), which agreement expired on September 30, 1963 (Rec. 17-18). Being unable to reach a new agreement, the employees in this bargaining unit struck on October 29, 1963, and peaceably picketed Respondent's premises (Rec. 18-19). The picket line was respected by some of Respondent's employees covered by contracts which did not expire until October 5, 1964 (Rec. 18)—namely, a contract with Local 780, covering **camera repairmen**, which had been entered into on August 10, 1962, and one with Local 666, covering **photographers**, entered into on May 5, 1962 (Rec. 17-18). Both of the latter agreements contained the following language:

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1. Since no testimony was taken, the facts are taken primarily from the complaint and other pleadings filed in the case.

"Section 2.2. AGREEMENT AGAINST STRIKES AND LOCKOUTS.

"(a) The parties mutually agree that there shall be no strike, work stoppage, slowdown, sitdown or picketing by the UNION or its representatives or members or lockout on the part of the COMPANY, unless and until all steps of the grievance procedure, including arbitration, shall have been employed and one of the parties hereto fails or refuses to comply promptly with any final decision made against such party thereunder.

"(b) If a strike by IATSE should occur, management, supervisory and clerical employees, watchmen, guards, firemen and other plant protection and maintenance employees shall be permitted to perform their respective functions without interference by the UNION or its members on the basis of a plan mutually agreed upon for such purpose by the COMPANY and the UNION.

"(c) In consideration of this Section, the UNION agrees not to sue the COMPANY, its officers or representatives, and the COMPANY agrees not to sue the UNION, its officers or agents, for any labor matters, in any court of law or equity, and neither party will institute any proceedings before any Government administrative board or agency for any act or omission of the other party or its agents or representatives which occurs during the life of this Agreement."

On the same day picketing began, Respondent filed a complaint in the Circuit Court of Brevard County, Florida, seeking a temporary and permanent injunction against Local 780 (film processors) from inducing by peaceful picketing or otherwise, the camera repairmen in Local 780 and the photographers in Local 666 to respect their picket lines (Rec. 13, 21). Respondent also sought to enjoin the camera

repairmen and the photographers from respecting the picket lines of the striking employees (Rec. 21).

The trial court granted Respondent's request in its entirety and issued a temporary restraining order, *ex parte* without notice, prohibiting the striking film processing employees from picketing the Respondent and, in addition, prohibiting Respondent's employees in the other two bargaining units from respecting the striking employees' picket line (Rec. 23-24). After unsuccessfully attempting to remove the matter to the federal district court, Petitioners moved the trial court to vacate its restraining order on the ground that it did not have jurisdiction over the subject matter (Rec. 25-26). The trial court granted the Petitioners' motion and vacated the restraining order (Rec. 29). Respondent sought supersedeas of the order vacating the restraining order (thereby seeking to reinstate the restraining order during the pendency of the appeal) in the Florida District Court of Appeal (Rec. 33, 45-47). The appeal court granted Respondent's motion and, on request of Respondent's counsel in open court, limited the restraining order to prohibiting non-striking employees (camera repairmen and photographers) from honoring the picket line of the striking employees (Rec. 45-46). Upon a plenary appeal, this restraining order was reaffirmed by the District Court of Appeal with the court specifically treating, but rejecting, the questions presented in this Petition (Rec. 47-66). Although refusing to acknowledge the principles of federal pre-emption or the requirement that state courts must follow federal law, the District Court of Appeal did hold that "We should point out that such an order enjoining appellees from striking and picketing carries no import that any person is required to continue as an employee or to return to work; but all remain possessed of the prerogative to discontinue their employment at will." (Rec. 66, App. D.,

infra, pp. 10a to 27a).[2] The Florida Supreme Court subsequently denied a petition for certiorari filed by Petitioners (Rec. 107, App. E, *infra*, p. 28a).

2. Petitioner Local 780 filed unfair labor practice charges with the National Labor Relations Board alleging Section 8 (a) (1) and (5) violations of the National Labor Relations Act, as amended (Rec. 28). To complete the picture of the various documents filed by the parties, Respondent sought a rule to show cause in the trial court why the business agents of the two Local Unions as well as employees of Respondent should not be held in contempt (Rec. 72-76).

REASONS FOR GRANTING THE WRIT

1. The decision of the District Court of Appeals is in direct conflict with *San Diego Building Trades Council* v. *Garmon,* 359 U. S. 236 (1959) and the other federal pre-emption cases of this Court. The facts recall to mind some of the reasons underlying the necessity for the doctrine of pre-emption in concerted activity cases—an *ex parte* restraining order without notice—a petition for contempt—the imposition of a restraining order by an appellate court (without trial) although the lower court had been convinced that it had originally erred—and a court decision which advised the employees that while they were enjoined from respecting a picket line there was no prohibition against their quitting their employment. And all of this in the face of the unfair labor practice charges filed against Respondent (Rec. 28) and a limited no-strike clause.[3]

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3. Although we do not want to become involved in a discussion of the merits of the instant suit, since only a showing of "arguably" protected activity is required in order to take a case out of a court's jurisdiction, nevertheless it might be appropriate to note that the no-strike clause herein (App. F, *infra,* p. 29a, clearly does not appear to apply to a refusal by employees to cross a picket line at their own place of employment. Thus, the clause prohibits strikes or work stoppages ". . . unless and until all steps of the grievance procedure . . . have been employed. . . ." The obligation not to strike or to stop work therefore appears to apply only to matters encompassed by the grievance procedure. Article XV, entitled "Grievance Procedure" (App. F, *infra,* pp. 29a to 32a) of the collective bargaining agreement, which is incorporated by reference in the Complaint by paragraph 15 thereof (Rec. 18), provides a procedure for resolving only grievances ". . . with respect to the interpretation or application of any provision of this Agreement . . ." Hence, a grievance relating to the question of crossing a picket line established by other employees of the company is outside the scope of coverage of Article XV and therefore *ipso facto* not affected by the no-strike clause. The admonishment of the Trial Examiner in *Illinois Bell Telephone Co.,* 88 NLRB 1171, quoted *infra,* fn. 4, pg. 8 that a no-strike clause must not necessarily be construed to contain a promise not to cross a picket line, would therefore be very

In *Garmon*, this Court clearly enunciated that when activities are arguably prohibited by Section 8 of the National Labor Relations Act, or protected by Section 7, no court—be it state or federal—has jurisdiction to restrain such activity on the application of a private party; that the courts are not primary tribunals to adjudicate such issues; that so as to insure uniformity, and to properly effectuate a fair administration of the Act, determinations in this area must be left in the first instance to the National Labor Relations Board. Absent "compelling precedent applied to essentially undisputed facts" (p. 246) and "In the absence of the Board's clear determination that an activity is neither protected nor prohibited" (*Ibid.*) the state courts are ousted of jurisdiction.

We have here no clear Board determination that the activity is neither prohibited nor protected; nor, are there compelling precedents applied to undisputed facts. Rather, we have clear Board decisions that in respecting primary picket lines of one's own employer, the respector of the picket line will be treated as the striking employees. Illustratively, in *Illinois Bell Telephone Company*, 88 NLRB 1171 (1950) the employer contended that the refusal of eight of its employees to cross a picket line established by another of its bargaining units amounted to a strike in violation of an existing no-strike agreement and it was, therefore, privileged to demote these employees. The Board rejected this contention [4] and held that the employees' conduct in refusing

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pertinent here. In any event, the necessity of having the Board determine the question of the permissibility of the employees' activity herein in the first instance is manifest.

4. The Board held that there was no no-strike clause in existence. It therefore found it unnecessary to consider the Trial Examiner's statement that even assuming that a no-strike clause existed, "... it does not necessarily follow that it (the no-strike clause) must also be construed to contain an agreement by the employees in the unit that they will, during the period of the (agreement) cross any validly established legal picket line at their place of business."

to cross the picket line was protected under the Act. Similarly, in the recent case of *L. G. Everist, Inc.*, 142 NLRB 193 (1963), the Board held that employees who refuse to cross a picket line are engaged in protected activity. The Board stated that such employees ". . . are similar to economic strikers, who may also be replaced by an employer to permit continued operation of the business but, who, if not permanently replaced, are entitled to reinstatement upon unconditional application."[5] To follow the Florida court's approach, however, one would never reach the question as to whether or not an employee respecting a picket line might be entitled to reinstatement at the end of the strike, for the court said, either refrain (under threat of contempt action) from refusing to cross the picket line, or quit. The employer would no longer be confronted with the question of whether or not to reinstate, for the employees' action of quitting would have been voluntary, even if judicially coerced.

The exact question presented here is not new for this Court. In a number of cases this Court has reversed *per curiam*, on pre-emption grounds, the action of state courts in granting injunctions ordering employees of common carriers to refrain from refusing to cross picket lines. *Teamsters, Chauffeurs and Helpers* v. *Kerrigan*, 353 U. S. 968 (1957), *General Drivers, Warehousemen and Helpers, Local*

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5. Two recent cases where courts have held the refusal of employees to cross a picket line at their own place of employment to be protected activity are the following: *NLRB* v. *John S. Swift Co.*, 277 F. 2d 641 (C.A. 7, 1960); *NLRB* v. *Stepp's Friendly Ford, Inc.*, —— F. 2d ——, 57 LRRM 2442 (CA 9, 1964). In the latter case, the Court held that, although the employer was not guilty of a refusal to bargain and the union's strike and picketing at his premises did not constitute an unfair labor practice strike, nevertheless the employer violated § 8 (a) (3) of the Act by discharging an employee for refusing to cross the picket line, since such a refusal constituted protected activity under the Act."

No. 89 v. *American Tobacco Company, Inc.*, 348 U. S. 978 (1955), *McCrary* v. *Aladdin Radio Industries*, 355 U. S. 8 (1957), *Bogle* v. *Jakes Foundry Co.*, 362 U. S. 401 (1960). In each of the cases, as here, the contention was made that the employees had an obligation to cross the picket lines. In the common carrier cases, the obligation was created by law —here it is contended that the obligation is one of contract. Certainly, even with a clear no-strike clause, it cannot be contended that there is greater legal efficacy to such a clause than to a statutory duty imposed as part of public policy of a state. In fact, the case of *In re Green*, 369 U. S. 689 (1962) involved a factual situation where the employer contended that a refusal to work constituted a breach of a "no-strike" obligation. Recognizing the special competence of the Board and the union's contention that the case arguably involved matters within the exclusive jurisdiction of the Board, the Court held that "a state court is without power to hold one in contempt for violating an injunction that the state court has no power to enter by reason of federal pre-emption." (p. 692). Moreover, the instant case is not limited to matters concerning employees who refuse to cross a picket line. It additionally involves the rights of striking employees to induce other employees to observe their picket line. Do not striking employees have such right? And, is not an injunction against respecting a picket line interference with the striking employees' right to seek such respect? If it is not clearly interference, is it not at least arguably so? Such was the situation in the case of *Ex Parte George*, 371 U. S. 72 (1962), where the employer contended that the picketing was to secure the disregard, breach, or violation of the collective bargaining agreement by the employees of a non-struck subsidiary. This Court held that the activity, if not prohibited, was at least arguably protected and, hence, pre-empted.

In the final analysis, no matter who the employer seeks to enjoin, the employer is attempting to break a strike of employees seeking to exert peaceable and legitimate economic pressure in order to obtain a new collective bargaining agreement. If Section 7, buttressed by Section 13 of the Act, is to be meaningful, then certainly the Board and not the courts must make the determination regarding conflicting claims as are involved here. Long before unionism, employees could quit their employment and, in part, one of the reasons for organization was to secure the right to resist the only then alternative—as the Florida court now suggests—that of quitting. And this does not necessarily imply that the employee's rights are absolute or that he may not be acting at his own peril when he respects a picket line. We only contend that the protections or penalties flowing from this concerted activity are for the Board, not the courts, to determine.[6]

2. This case additionally presents a question of great importance in labor relations and one specifically reserved by this Court in its footnote 8 in *Dowd Box Co., Inc.* v. *Courtney*, 368 U. S. 502 (1962). The Court there stated that in the oral argument of the case the question of whether the Norris-LaGuardia Act might be applicable to a suit brought in a state court for violation of a contract made by a labor organization was discussed. The question, however, was not involved in the case and the Court expressly refrained from intimating any view on it. At that time, how-

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6. In submitting the foregoing, we, of course, do not contend that the employer could not have sued Petitioners for damages for an alleged breach of the contract such as in Local 17' *Teamsters* v. *Lucas Flour Co.*, 362 U. S. 85 (1962) or sought arbitration under the provisions of the collective bargaining agreement such as in *Drake Bakeries, Inc.* v. *Local 150*, 370 U. S. 254 (1962). We have concerned ourselves only with the protected activity and not the other employer remedies available.

ever, the Court had not yet decided *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962). In *Sinclair* the Court held that Norris-LaGuardia prohibits injunctions by federal courts in suits for breach of collective bargaining agreements.

In the instant matter, the Florida court held that Norris-LaGuardia is not applicable to state court suits. In so holding, it ignored the principles of uniform handling of problems of labor relations and the supersession of state substantive law emphasized by this Court in *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448 (1957) and subsequent cases, as, for example, *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95 (1962). In *Lucas Flour*, overruling a state court's concept that it could apply local rather than federal labor law in a suit to enforce a collective bargaining agreement, the Court declared that the utilization of state law was erroneous and that ". . . incompatible doctrines of local law must give way to principles of federal labor law." (p. 102). The Court stated:

> "The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy." (p. 103).

Subsequently, in *Sinclair Refining Co.*, 370 U. S. 195 (1962), the Court, in formulating that federal labor policy, held that Norris-LaGuardia prohibits injunctions in suits for breach of collective bargaining agreements.

The importance which this Court rightly attaches to uniformity would seem to require that the Norris-LaGuardia Act should also control state enforcement of collective bar-

gaining agreements. It would seem anomalous to find that the state court was required to follow federal law when the remedy sought was damages but that this same court could apply doctrines of local law incompatible with federal labor law when the remedy was for an injunction. Nor is any useful purpose served by arguing concepts of "remedy" rather than "substance", for we are sure that it was never intended that the uniformity desired could be thwarted by permitting forum shopping in order to secure a labor injunction and different results in the federal and state judicial systems.[7] The abuses of the labor injunction need no amplification. It would indeed be ironic at this late stage of our country's development of a federal body of labor law to find that our nation's labor policy could be frustrated by substituting the labor injunction in state courts for collective bargaining. One wonders what the collective bargaining process in this case would have produced, without a strike, had the employer known that antiquated remedies were not available to it because of the overriding national policy.

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7. In this connection, this Court's decision in *Bernhardt* v. *Polygraphic Co. of America*, 350 U. S. 198 (1956) is significant. There the court held that a federal court, required by *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938) to follow state "substantive" law in a diversity action, was barred from specifically enforcing an agreement to arbitrate where that remedy was not available under the applicable state law. It found the remedy "outcome-determinative" within the meaning of *Guaranty Trust Company* v. *York*, 326 U. S. 99 (1945). In the converse situation, presented under § 301, the requirement of uniformity would seem to require the states to deny injunctive relief if it is not available under federal law. See Meltzer, "The Supreme Court, Congress, and State Jurisdiction over Labor Relations: II," 59 *Columbia Law Review*, 269, 280 (1959).

CONCLUSION

For the foregoing reasons this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

STATUTES INVOLED

Labor Management Relations Act, 1947, Sections 7, 8, 13, 61 Stat. 136, 29 U. S. C. §§ 157, 158, 163:

Sec 7:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the righ to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Sec 8:

(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organiza-

tion or to enter into any agreement which is prohibited by section 8 (e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work;

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recog-

nize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;"

Sec. 13:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Norris-La Guardia Act, Sec. 4, 47 Stat. 70, 29 U. S. C. 104:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> "(a) Ceasing or refusing to perform any work or to remain in any relation of employment;
>
> "(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;
>
> "(c) Paying or giving to, or withholding from, any person participating or interested in such labor dis-

pute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, partolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title."

APPENDIX B

TEMPORARY RESTRAINING ORDER

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA. IN CHANCERY

Radio Corporation of America, a corporation, Plaintiff, vs. Local 780, International Alliance of Theatrical Stage Employees, and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, by and through Jonathan Reynolds, its business agent and representative& and Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, by and through Arthur W. Beeman, its business agent and representative, Defendants.	No. 27040

TEMPORARY RESTRAINING ORDER

This cause coming on to be heard on Plaintiff's sworn bill of complaint, and upon its application for a temporary restraining order without notice, the court being advised in

the premises and it appearing that the injuries apprehended will be done if an immediate remedy is not afforded, and that therefore, plaintiff is entitled to a temporary restraining order herein without notice, it is therefore,

CONSIDERED, ORDERED, ADJUDGED AND DECREED, that pending further order of the court herein:

1. The Defendants, Local 780, International Alliance of Theatrical Stage Employees, and Moving Picture Machine Operators of the United States and Canada, AFL-CIO; Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO; Jonathan Reynolds; Arthur W. Beeman and all of the agents, servants, officers and members of the foregoing organizations and each of them, be and they are hereby restrained and enjoined and order to refrain from:

a. Calling, causing, inducing by picketing or otherwise, or in any other way participating in any strike, work stoppage, slowdown, sitdown or picketing, at any of the plaintiff's facilities located at Cape Canaveral, Florida.

b. Calling, causing, inducing or in any way participating in any strike, work stoppage, slowdown or picketing at the plaintiff's facilities located at Patrick Air Force Base, Florida, except with respect to employees who are members of the bargaining unit with respect to which RCA Service Company, a division of Radio Corporation of America, and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (AFL-CIO) and its local 780, entered into a collective bargaining agreement on December 18, 1961, covering photographic laboratory employees, which contract expired midnight, September 30, 1963.

c. Calling, causing, inducing or in any way participating in any strike, work stoppage, slowdiwn, sitdown, or picketing at the plaintiff's facilities or at any place where the plaintiff has employees working at the Merritt Island launch area, Merritt Island, Florida.

This temporary restraining order shall become of full force and effect upon the plaintiff giving bond as required by law in the sum of Five Thousand Dollars and approved by the Court or its Clerk, and upon the giving and approving of said bond, such approval to be endorsed hereon, the Sheriff of Brevard County, Florida, is hereby ordered and directed to forthwith serve said order upon said defendants and each of them.

DONE AND ORDERED in Titusville, Florida, this 29th day of October, 1963.

Vassar B. Carlton,
Circuit Judge.

APPENDIX C

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

Radio Corporation of America, Plaintiff, vs. Local 780, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, et al., Defendants.	Chancery No. 27040

Order Dissolving Temporary Restraining Order and Dismissing Action

This cause coming on this day to be heard upon the motion of the defendant to dissolve, set aside and vacate the temporary restraining order heretofore issued herein, and to dismiss the action, and the court having heard argument pro and con, and being fully advised in the premises, and the court having found that the subject matter of the controversy is subject to the national Labor Relations Act, as amended, and that in accordance with the decisions of the United States Supreme Court and the Supreme Court of

this state the matter is federally preempted and that the sole forum authorized to grant relief, if any, is warranted, is the National Labor Relations Board; it is thereupon

ORDERED, ADJUDGED, AND DECREED that the temporary restraining order, heretofore issued herein, be and the same is hereby vacated, dissolved, and set aside;

DONE AND ORDERED in Chambers, in Titusville, Florida, this 4th day of November, 1963.

Vassar B. Carlton /s/
Circuit Judge.

APPENDIX D

OPINION OF COURT OF APPEAL

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT
JANUARY TERM, A. D. 1964

Radio Corporation of America, Appellant, vs. Local 780, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada AFL-CIO, by and through Jonathan Reynolds, its business agent and representative, and Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, by and through Arthur W. Beeman, its business agent and representative, Appellees.	Case No. 4566

Opinion filed January 17, 1964.

Interlocutory appeal from the Circuit Court for Brevard County; Vassar B. Carlton, Judge.

Fowler, White, Gillen, Humkey & Trenam, Tampa; Crofton, Brewer & Holland, Titusville, for Appellant.

Blackwell, Walker & Gray, Miami; Bernard M. Mamet, Chicago, Illinois, for Appellees.

KANNER, JUDGE.

Upon motion of the plaintiff-appellant, Radio Corporation of America, the Circuit Court of Brevard County entered without notice a temporary restraining order [1] against

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1. "CONSIDERED, ORDERED, ADJUDGED AND DECREED, that pending further order of the court herein:

1. The Defendants, Local 780, International Alliance of Theatrical Stage Employees, and Moving Picture Machine Operators of the United States and Canada, AFL-CIO; Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO; Jonathan Reynolds; Arthur W. Beeman and all of the agents, servants, officers and members of the foregoing organizations and each of them, be and they are hereby restrained and enjoined and ordered to refrain from:

a. Calling, causing, inducing by picketing or otherwise, or in any other way participating in any strike, work stoppage, slowdown, sitdown or picketing, at any of the plaintiff's facilities located at Cape Canaveral, Florida.

b. Calling, causing, inducing or in any way participating in any strike, work stoppage, slowdown, or picketing at the plaintiff's facilities located at Patrick Air Force Base, Florida, except with respect to employees who are members of the bargaining unit with respect to which RCA Service Company, a division of Radio Corporation of America, and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (AFL-CIO) and its Local 780, entered into a collective bargaining agreement on December 18, 1961, covering photographic laboratory employees, which contract expired midnight, September 30, 1963.

c. Calling, causing, inducing or in any way participating in any strike, work stoppage, slowdown, sitdown, or picketing at the plaintiff's facilities or at any place where the plaintiff has employees working at the Merritt Island launch area, Merritt Island, Florida."

defendants-appellees, Local 780, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, by and through Jonathan Reynolds, its business agent and representative; and Local 666, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, by and through Arthur W. Beeman, its business agent and representative. Pursuant to motion subsequently made by appellees, the circuit judge dissolved the temporary restraining order; the matter is before this court on interlocutory appeal from the order of dissolution. Based upon appellant's petition for review of an order denying supersedeas, this court reinstated the temporary restraining order with modifications,[2] pending outcome of this appeal.

The question raised here is one of jurisdiction, the chancellor having specified as basis for his order of dissolution "• • • that the subject matter of the controversy is subject to the National Labor Relations Act, as amended, and that in accordance with the decisions of the United States Supreme Court and the Supreme Court of this state the matter is federally pre-empted and that the sole forum authorized to grant relief, if any, is warranted, is the National Labor Relations Board • • •".

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2. "ORDERED and ADJUDGED that the temporary restraining order of the Circuit Court of Brevard County, Florida, in said cause bearing date of October 29, 1963, be and the same is hereby reinstated and continued in force and effect during the pendency of the interlocutory appeal, insofar only as the same pertains to that certain collective bargaining agreement dated August 10, 1962, and work covered under it between Appellant and Local 780, as the bargaining unit and insofar as the same pertains to that certain collective bargaining agreement under date of May 5, 1962, and work covered under it between Appellant and Local 666 as the bargaining unit, except that portion of paragraph 'b' beginning with the word 'except', together with that portion designated as paragraph 'c', and except with respect to employees no longer under either of the mentioned contracts."

Our view is at variance with that of the chancellor; from our study, we have concluded that jurisdiction does lodge in the state court.

No answer was filed nor testimony or controverting evidence offered at the hearing on the motion to dissolve; therefore, our factual review as it concerns the jurisdictional problem necessarily falls within the confines of the verified complaint.

Essentially, the complaint alleges that R.C.A. is engaged at Patrick Air Force Base and Cape Canaveral [3] in the photographing of missile tests performed by the United States Government and in the processing and handling of films thus made; that the work which it performs is of such critical importance to the missile test program at the Cape that the nation's defense effort would be delayed and, because of this, United States Air Force and defense department officials have stated that, unless performance is immediately secured, this may result in cancellation of R.C.A.'s contracts.

It is then alleged that through collective bargaining negotiations with each of the defendant unions there exists a contract containing the following provision:

> "Section 2.2. Agreement against strikes and lockouts.
>
> (a) The parties mutually agree that there shall be no strike, work stoppage, slowdown, sitdown or picketing by the union or its representatives, or members or lockout on the part of the company, unless and until all steps of the grievance procedure, including arbitration, all have been employed and one of the parties hereto fails or refuses to comply promptly with any final decision made against such party thereunder."

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3. Subsequently named Cape Kennedy.

It further appears from the complaint that in its operations R.C.A. employs, among others, a group of photographers, a group of processors, and a group of camera repairmen; that the film processors group is represented by Local 780, of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, which also represents the unit of camera repairmen, and that the photographers unit is represented by Local 666 of the same national union; that R.C.A. and Local 780, as representatives of the film processors, entered into a contract with respect to the employees of that group on August 10, 1962, set to expire October 5, 1964; that R.C.A. and Local 666 as representatives of the photographers, entered into a contract as to that unit of employees, this contract to expire also on October 5, 1964; that both contracts contain the same no-strike clause hitherto quoted and that both are in full force and effect.

There are also allegations setting out that on December 18, 1961, Local 780, as representative of the camera repairmen's unit, entered into a contract with R.C.A. and that this contract expired on September 30, 1963; that attempts to negotiate a new contract have thus far failed; that on October 29, 1963, Local 780 caused the group of employees under that expired contract to strike against R.C.A.; that in furtherance of its strike Local 780 has caused members and employees of R.C.A. to picket the entrances to its facilities at the Cape and Patrick Air Force Base; that the picketing has induced R.C.A.'s employees at those two places whose contracts are still in effect to strike in violation of the "no strike" clause; that employees of R.C.A. who are members of Locals 780 and 666 and whose contracts containing the "no strike" clause are still operative are violating those contracts by striking and refusing to

work; and that the damage and injury which R.C.A. suffers and will suffer, absent the relief sought, is of such a nature that the amount of it will be difficult if not impossible to ascertain legally and that neither Local 780 nor Local 666 is financially able to respond in an action at law for damages. Certain other allegations in the complaint relate to picketing of International Brotherhood of Electrical Workers, AFL-CIO, members employed by R.C.A. at Merritt Island, but the request for relief as to those employees was abandoned. The restraining order is now sought to apply only to the employees under the contracts in force with Locals 780 and 666, respectively, which are scheduled to expire October 5, 1964.

It thus appears that R.C.A. seeks to enforce the no-strike, no-picketing pledge of two collective bargaining agreements, premising its right to injunctive relief upon breach of them by and through appellees.

The labor unions maintain with respect to jurisdictional residence of the cause that, by certain cases, the authority of the state to issue injunctions in labor matters of this type has been pre-empted by federal law under which the National Labor Relations Board has been accorded exclusive jurisdiction of such matters. Perhaps the most heavily reriel upon cases advanced by them are those of *Re Green*, 1962, 369 U. S. 689, 8 L. Ed. 2d 198, 82 S. Ct. 1114; *Ex parte George*, 1962, 371 U. S. 72, 9 L. Ed. 2d 133, 83 S. Ct. 178; *General Drivers, Warehousemen, and Helpers, Local Union No. 89* v. *American Tobacco Co., Inc.*, 1955, 348 U. S. 978, 99 L. Ed. 762, 75 S. Ct. 569; *Bogle* v. *Jakes Foundry Co.*, 1960, 362 U. S. 401, 4 L. Ed. 2d 864, 80 S. Ct. 812; *McCrary* v. *Aladdin Radio Industries, Inc.*, 1957, 355 U. S. 8, 2 L. Ed. 2d 22, 78 S. Ct. 12; and *Teamsters, Chauffeurs, Helpers & Taxi Cab Drivers, Local Union No. 327* v. *Kerrigan Iron*

Works, Inc., 1957, 353 U. S. 968, 1 L. Ed. 2d 1133, 77 S. Ct. 1055.

Re Green, decided May 21, 1962, involved an attorney representing a labor union, who had been held in contempt by an Ohio state court without a hearing which could have given him an opportunity to establish that the court had no power to issue the injunction because acting in a field exclusively reserved by Congress for the National Labor Relations Board. The contempt charged was that of advising the union to continue picketing in violation of an *ex parte* injunction. In *habeas corpus* proceedings in the state courts the attorney challenged their jurisdiction to penalize him for the conduct cited and was denied relief. On certiorari, the Supreme Court of the United States reversed the judgment below, holding that due process was violated by the conviction without a proper hearing. The respondent had argued that in the dispute between the employer and the union there was not concerned any attempt to organize workers nor any refusal of the employer to bargain, but only the enforcement of a no-strike clause in a collective bargaining agreement, which was left by Congress either to the federal courts or to the state courts. The petitioner attorney urged that the unfair labor practice charge filed with the National Labor Relations Board was based on the employer's refusal to bargain in good faith and that the collective bargaining agreement which the employer sought to have the state court enforce had been signed by unauthorized agents. The Supreme Court of the United States, in the course of its opinion, commented that it was impossible to determine from the record whether or not the dispute was exclusively within the jurisdiction of the National Labor Relations Board and, further, that the Ohio court could not know whether it was within bounds when, without a hearing, it cited a person for contempt for violating the injunction.

As to the November 13, 1962, *Ex parte George* case, the situation factually was one where the American Oil Company was involved in a labor dispute with the National Maritime Union, which peacefully picketed a refinery operated by a subsidiary of American Oil Company. The subsidiary had a valid collective bargaining agreement with another union. A Texas court granted to the subsidiary a temporary injunction against picketing at the refinery, finding that the object of the National Maritime Union's picketing was to secure the disregard, breach or violation of the collective bargaining agreement by the refinery workers and their union in violation of a Texas law. A port agent of the National Maritime Union, despite the injunction, picketed the refinery and was held in contempt. Upon habeas corpus proceeding, the Texas Supreme Court held that the contempt order was not void, ruling that the port agent's conduct was neither arguably prohibited nor arguably protected by the National Labor Relations Act. On certiorari, the Supreme Court of the United States vacated the judgment of the Texas Supreme Court and stated that the district court was without jurisdiction if the port agent's picketing was arguably prohibited or arguably protected by the National Labor Relations Act. The court held, in the light of the Texas court's finding that American Oil Company wholly owned the subsidiary and directed and controlled all of its activities, that even assuming without deciding that the picketing would not fall within the preclusions of certain sections of the National Labor Relations Act, the port agent's picketing constituted conduct at least arguably protected by section 7 of the Act. As may be ascertained from the above narrative and from a reading of the case, there was no contract between the injunctively restrained Maritime Union and the American Oil Company or its subsidi-

ary. Thus, the enforcement of a collective bargaining contract was not at issue.

The other cases mentioned above as having been relied upon by appellees are per curiam reversals by the Supreme Court of the United States of state courts' decisions, except that in the *Aladdin* case the judgment was vacated and the case remanded. A perusal of the factual data set out by these state decisions [4] reveals that certain features are common to all. In each, the complainant was seeking to compel other companies, common carriers, and their employees to resume customary service despite picketing at the complaining employer's plant. In none did the complaining party rely upon a collective bargaining agreement nor any no-strike or no-picketing pledge between itself and its employees or any union on their behalf, but those against whom the injunctive relief was sought and procured had no contractual relations at all with the complaining employer. In the *General Drivers, Kerrigan,* and *Aladdin* cases, the carriers' employees were claiming to be exempt from performing their customary services by virtue of the provision in their respective contracts with the carriers to the effect that it shall not be a violation of such contract or a cause for discharge for the employees to refuse to handle "unfair goods". In the *Jakes Foundry* case, the court simply characterized the essentials as exactly similar to the *Aladdin* case, which there controlled. The Supreme Court of the United States rendered each of the four opinions per curiam

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4. *General Drivers, Warehousemen and Helpers, Local Union No. 89* v. *American Tobacco Co., Inc.*, Ky. 1954, 264 S. W. 2d 250; *Jakes Foundry Co.* v. *Tennessee-Carolina Transp., Inc.*, 1959, 46 Tenn. App. 309, 329 S. W. 2d 364; *Aladdin Radio Industries, Inc.* v. *Associated Transport, Inc.*, 1956, 42 Tenn. App. 52, 298 S. W. 2d 770; and *Kerrigan Iron Works, Inc.* v. *Cook Truck Lines, Inc.*, 1956, 41 Tenn. App. 467, 296 S. W. 2d 379.

without comment, citing cases which, again, do not relate to violation and enforcement of collective bargaining agreements. Thus, in these four cases, the conduct protested had to do with failure of the common carriers or their employees to render "customary service", which the Tennessee and Kentucky courts said was required as a public duty both under common and statutory law. As stated, that which must be decided here is solely the question of jurisdictional power of a state court to enforce collective bargaining agreements; that which is complained of is breach of a no-strike, no-picketing provision of the employees' contract with their employer via the respective local unions.

In opposition to the views of appellees, the appellant, R.C.A., urges that, under recent opinions, the Supreme Court of the United States has indicated consistently that jurisdiction of state courts over suits involving violation of collective bargaining agreements is not divested.

Section 301(a) of the Labor Management Relations Act, 1947, interpreted through certain United States Supreme Court decisions, relates to suits for violation of contracts between an employer and a labor organization. This section provides as follows:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 61 Stat. 156, 29 USC, section 185(a).

In *Dowd Box Co.* v. *Courtney,* decided February 19, 1962, 368 U. S. 502, 7 L. Ed. 2d 483, 487, 82 S. Ct. 519, the sole question was whether the above quoted subsection operated

to divest a state court of jurisdiction over a suit for violation of a contract between an employer and a labor organization. The answer of the Supreme Court of the United States was that section 301(a) was not intended to deprive a party to a collective bargaining contract of the right to seek redress for its violation in an appropriate state tribunal. Affirming the judgment before it, the court expressed agreement with the Supreme Judicial Court of Massachusetts that the courts of that Commonwealth had jurisdiction in the case, quoting from the Massachusetts decision:

> "'We do not accept the contention that State courts are without jurisdiction. The statute does not so declare. The conferring of jurisdiction in actions at law upon the appropriate District Courts of the United States is not, in and of itself, a deprivation of an existing jurisdiction *both at law and in equity in State courts.* The case principally relied upon by the defendant, *Textile Wkrs. Union of America* v. *Lincoln Mills,* 353 U. S. 448, does not so state. In the absence of a clear holding by the Supreme Court of the United States that Federal jurisdiction has been made exclusive, we shall not make what would be tantamount to an abdication of the hitherto undoubted jurisdiction of our own courts.'" (Emphasis supplied.)

The Supreme Court of the United States, turning subsequently to the question of congressional intent, pointed out that Congress had rejected the proposal that violations of collective bargaining agreements be made unfair labor practices, deliberately choosing instead to leave the enforcement of such agreements "to the usual processes of the law."

The case of *Smith* v. *Evening News Association,* 371 U.S. 195, 9 L. Ed. 2d. 246, 249, 83 S. Ct. 267, 268, decided by the Supreme Court of the United States on December 10, 1962, involved an employee who, individually and as assignee of other employees, brought a suit for damages against the

employer for alleged breach of a collective bargaining contract, although the alleged conduct of the employer was an unfair labor practice within the jurisdiction of the National Labor Relations Board. Both the trial court and the Michigan Supreme Court were of the view that the state court lacked jurisdiction, premised upon the ground that the National Labor Relations Board had exclusive jurisdiction of the subject matter. After decisions had been rendered in certain other cases, including *Dowd Box Co.* v. *Courtney, supra,* the Supreme Court of the United States granted certiorari. As to jurisdiction of courts in suits arising under section 301 and the pre-emption doctrine, the court, reversing and remanding, said:

> "The trial court sustained respondent's motion to dismiss for want of jurisdiction on the ground that the allegations, if true, would make out an unfair labor practice under the Labor Management Relations Act and hence the subject matter was within the exclusive jurisdiction of the National Labor Relations Board. The Michigan Supreme Court affirmed, 362 Mich. 350, 106 N.W. 2d 785, relying upon *San Diego Bldg. Trades Council* v. *Garmon,* 359 U. S. 236, 79 S. Ct. 773, 3 L. Ed 2d 775, and like pre-emption cases. Certiorari was granted, 369 U. S. 827, 82 S. Ct. 843, 7 L. Ed. 2d 793, after the decisions of this Court in *Local 174, Teamsters etc.* v. *Lucas Flour Co.,* 369 U. S. 95, 82 S. Ct. 571, 7 L. Ed. 2d 593, and *Charles Dowd Box Co.* v. *Courtney,* 368 U. S. 502, 82 S. Ct. 519, 7 L. Ed. 2d 483.
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> "*Lucas Flour* and *Dowd Box,* as well as the later *Atkinson* v. *Sinclair Refining Co.,* 370 U. S. 238, 82 S. Ct. 1318, 8 L. Ed. 2d 462, were suits upon collective bargaining contracts brought or held to arise under § 301 of the Labor Management Relations Act and in these cases the jurisdiction of the courts was sustained although it was seriously urged that the conduct involved was arguably protected or prohibited by the Labor Management Relations Act and therefore within

> the exclusive jurisdiction of the National Labor Relations Board. In *Lucas Flour* as well as in *Atkinson* the Court expressly refused to apply the pre-emption doctrine of the *Garmon* case; and we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by § 301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301. If, as respondent strongly urges, there are situations in which serious problems will arise from both the courts and the Board having jurisdiction over acts which amount to an unfair labor practice, we shall face those cases when they arise. This is not one of them, in our view, and the National Labor Relations Board is in accord." (Footnotes omitted.)

It is to be observed that the *Smith* v. *Evening News* and the *Dowd* cases just discussed, along with those of *Lucas Flour* and *Atkinson* to which the Supreme Court of the United States made reference in the *Smith* case, were actions upon breach of collective bargaining contracts. The *Garmon* case (*San Diego Bldg. Trades Council* v. *Garmon,* 1959, 359 U. S. 236, 3 L. Ed. 2d 775, 79 S. Ct. 773), enunciating the pre-emption doctrine, has as a distinguishing factual characteristic an absence of any breached collective bargaining contract.

A New York court was confronted with the jurisdictional problem in the May 1, 1963, case of *Perry* v. *Robilotto,* 39 Misc. 2d 147, 240 N. Y. S. 2d 331 (Sup. Ct.) a case in marked parallel to the instant one. The cause was before the court on application to obtain a stay to prevent a strike, pending a hearing on an order for a temporary injunction against a local union. The court concluded that the state court has

jurisdiction to enjoin, as a breach of contract, a strike which is in violation of a no-strike clause in a collective bargaining dispute, holding that the strike was not a "labor dispute" within the New York Civil Practice Act.

In the California case of *A. I. Gage Plumbing Supply Company, Inc.* v. *Local 300 of the International Hod Carriers, Building and Common Laborers Union of America,* 1962, 202 Cal. App. 2d 197, 20 Cal. Rptr. 860, an action for injunctive relief by a contractor against a union for breach of contract arising from a strike in violation of a collective bargaining no-strike agreement, the court of that state said:

> "Defendant appeals primarily on the grounds that the trial court had no jurisdiction to try the action in that the union's conduct amounted to an 'unfair labor practice' over which jurisdiction is preempted by the federal government in the Labor Management Relations Act of 1947 and must be rectified, if at all, by the National Labor Relations Board and not by a state tribunal. Plaintiff urges that the suit is essentially one for an injunction and for damages arising from a breach of contract, even though such conduct might also directly or incidentally be an unfair labor practice.
>
> "The distinction between the two theories of suit is fundamental. If the suit is to enjoin and collect damages from an unfair labor practice absent any collective bargaining contract, it has been decided by the United States Supreme Court that the federal government has preempted this area of labor relations and in the absence of an overwhelming state interest such as violent picketing (*Allen-Bradley Local* v. *Wisconsin Employment Relations Board,* 315 U. S. 740, 749, 62 S. Ct. 820, 86 L. Ed. 1154; *United Construction Workers* v. *Laburnum Const. Corp.,* 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025), the sole jurisdiction lies with the National Labor Relations Board (*San Diego Building Trades Council* v. *Garmon,* 359 U. S. 236, 79 S. Ct., 773, 3 L. Ed. 2d 775). This preemption occurs even though

the National Labor Relations Board has refused to hear the controversy as happened in the instant case.

"On the other hand, if there is a collective bargaining agreement in effect between the parties, and an action is brought for an injunction, damages, or arbitration of the dispute arising out of the contract the federal courts and the state courts are proper tribunals for redress. (*Charles Dowd Box Co., Inc.* v. *Courtney*, 368 U. S. 502, 82 S. Ct. 519, 7 L. Ed. 2d 483; *McCarroll* v. *Los Angeles County, etc. Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322.)

"A breach of a collective bargaining contract is not in itself an unfair labor practice. The National Labor Relations Board has no jurisdiction to try the case nor has it the power to give damages for breach of contract. (*Grunwald-Marx, Inc.* v. *Los Angeles Joint Board*, 52 Cal. 2d 568, 581, 343 P. 2d 23.)"

Yet another state court, that of Pennsylvania, said in *Philadelphia Marine Trade Ass'n.* v. *Int'l. Longshoreman's Ass'n.*, 1955, 382 Pa. 326, 115 A. 2d 733, 736, cert. denied, 350 U. S. 843, 100 L. Ed. 751, 76 S. Ct. 84, a case which concerned violation of a collective bargaining agreement:

"Defendants present several questions for determination, one of which challenges the jurisdiction of the court below on the ground that plaintiffs' complaints are cognizable only in a Federal and not a State court. This contention is specifically answered by the decision of this court in *General Building Contractors' Association* v. *Local Union No. 542*, 370 Pa. 73, 87 A. 2d 250, 32 A. L. R. 2d 822, cited with approval in *Garner* v. *Teamsters, Chauffeurs and Helpers, Local Union No. 776*, 373 Pa. 19, 25, 94 A. 2d 893, 897. In that case we upheld the granting of an injunction which enjoined the violation of a collective bargaining agreement by a labor union. It was there argued that Congress, by enactment of the Labor-Management Relations Act of 1947, 29 U. S. C. A. § 141 *et seq.*, had taken from the State courts the jurisdiction to issue such an injunction,

but we held that neither that Act nor any other Federal legislation deprived the State courts of their inherent equity powers for the enforcement of contracts."

Numerous other state courts have sustained their right, jurisdictionally, to utilize injunction against a strike and picketing for breach of a collective bargaining agreement.[5]

Interesting is the case of *Tidewater Express Lines* v. *Freight Drivers*, etc., 1963, 230 Md. 450, 187 A. 2d 685, 688. There, the Court of Appeals of Maryland, commenting that there seemed to be no room for any finding other than that the Maryland Legislature had taken away the power of the court to issue the injunction there sought, observed that the other state courts which have permitted injunctions for breach of an existing labor agreement generally are, either in states having no anti-injunction statute, such as Cali-

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5. *McCarroll* v. *Los Angeles County District Council of Carpenters*, 1957, 49 Cal. 2d 45, 315 P. 2d 322, cert. denied, 355 U. S. 932, 2 L. Ed. 2d 415, 78 S. Ct. 413; *McLean Distributing Co.* v. *Teamsters, Local 993*, 1959, 254 Minn. 204, 94 N. W. 2d 514, cert. denied, 360 U. S. 917, 3 L. Ed. 2d 1534, 79 S. Ct. 1436; *McLean Trucking Co.* v. *Doyle*, 1959, 17 Misc. 2d 478, 184 N. Y. S. 2d 114; affirmed, 8 A. D. 2d 789, 188 N. Y. S. 2d 943; motion for leave to appeal denied, 9 A. D. 2d 677, 193 N. Y. S. 2d 223; *Anchor Motor Freight* v. *Local 445, Teamsters*, 1958, 12 Misc. 2d 757, 171 N. Y. S. 2d 506; affirmed, 5 A. D. 2d 869, 171 N. Y. S. 2d 511; further proceedings reported at 10 A. D. 2d 994, 204 N. Y. S. 2d 98; 11 A. D. 2d 766, 204 N. Y. S. 2d 891; *Republican Aviation Corp.* v. *Republic Lodge 1987*, 1957, 10 Misc. 2d 783, 169 N. Y. S. 2d 651 (Sup. Ct.); *Bee Line, Inc.* v. *Local 252*, 1956, 157 N. Y. S. 2d 232 (Sup. Ct.); *General Electric Co.* v. *Int'l. Union, Etc.*, 1952, 93 Ohio App. 139, 108 N. E. 2d 211; appeal dismissed 158 Ohio St. 555, 110 N. E. 2d 424; *Masetta* v. *Nat'l. Bronze & Aluminum Foundry Co.*, 1952, 62 Ohio Abs. 374, 107 N. E. 2d 243; reversed on other grounds, 159 Ohio St. 306, 112 N. E. 2d 15; *Foley Const. Co.* v. *Local 100*, 1960, 85 Ohio Abs. 332, 14 Ohio Ops. 2d 39, 172 N. E. 2d 170; *General Building Contractors Ass'n.* v. *Local No. 542*, 1952, 370 Pa. 73, 87 A. 2d 250; *Associated General Contractors* v. *Trout*, 1961, 59 Wash. 2d 90, 366 P. 2d 16; *Alabama Cartage Co.* v. *Int'l. Brotherhood*, 1948, 250 Ala. 372, 34 So. 2d 576.

fornia and Ohio, or where, as in Minnesota and Pennsylvania, there is express statutory exemption of breaches of collective bargaining agreements from the coverage of anti-injunction statutes. Although New York, for example, has an anti-injunction statute, the Maryland court characterized it as less restrictive than that of Maryland. In Florida, there is no such anti-injunction statute.

Both the appellant and the appellees, in connection with their respective positions, cite the 1962 case of *United Steel Workers of America, AFL-CIO, Local 6140* v. *Nubar Tool & Engineering Co., Inc.*, Fla. App. 148 So. 2d 45, 49, cert. denied 153 So. 2d 306, decided by this court. That case was not concerned with violation of any no-strike, no-picketing provision of a collective bargaining contract, although the court in its opinion made the collateral observation that:

> "Equally clear is the provision that activities engaged in by unions and/or employers arising out of a labor dispute may be regulated by the states if such activities are neither protected nor prohibited under sections 7 and 8 of the N. L. R. A., *supra*. See *International Union, U. A. W., A. F. of L., Local 232* v. *Wisconsin Emp. Rel. Bd., supra.*"

Insofar as Florida is concerned, there is no interdiction, either by statute or through any decision of our Supreme Court which curtails jurisdictional power of the state court to entertain a proceeding such as this; nor, as to the subject matter here involved, does any act of Congress which may be restrictive as to federal court jurisdiction express such a limitation upon jurisdiction of a state court. Absent a congressional or state enactment or a judicial pronouncement by the United State Supreme Court or the Florida Supreme Court to the contrary, jurisdiction of the state court is not divested. From our study and research, the precise question presently before this court has not been adjudicated by

the Supreme Court of the United States. We do not find as persuasive the particular decisions of that tribunal urged by the appellees. Rather, other United States Supreme Court cases which we have cited, along with decisions emanating from various states, leave us persuaded that jurisdiction of Florida courts under circumstances such as these is not pre-empted.

The chancellor's order of dissolution is reversed, with direction that the temporary restraining order here involved be modified to conform to this court's alterations of it as previously set out in footnote 2 of this opinion, so that it shall apply only to the two existing contracts which we have specified. We should point out that such an order enjoining appellees from striking and picketing carries no import that any person is required to continue as an employee or to return to work; but all remain possessed of the prerogative to discontinue their employment at will.

Reversed and remanded.

SMITH, C. J., and SHANNON, J., CONCUR.

APPENDIX E

DENIAL OF PETITION FOR CERTIORARI

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1964

WEDNESDAY, OCTOBER 28, 1964
(Caption Omitted)

Case No. 33, 396

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal, Second District of Florida, in said cause bearing date January 17, 1964, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy
TEST:
Sid J. White /s/
Sid J. White
Clerk Supreme Court

APPENDIX F

COLLECTIVE BARGAINING PROVISIONS INVOLVED

"Section 2.2. AGREEMENT AGAINST STRIKES AND LOCKOUTS.

"(a) The parties mutually agree that there shall be no strike work stoppage, slowdown, sitdown or picketing by the UNION or its representatives or members or lockout on the part of the COMPANY, unless and until all steps of the grievance procedure, including arbitration, shall have been employed and one of the parties hereto fails or refuses to comply promptly with any final decision made against such party thereunder.

"(b) If a strike by IATSE should occur, management, supervisory and clerical employees, watchmen, guards, firemen and other plant protection and maintenance employees shall be permitted to perform their respective functions without interference by the UNION or its members on the basis of a plan mutually agreed upon for such purpose by the COMPANY and the UNION.

"(c) In consideration of this Section, the UNION agrees not to sue the COMPANY, its officers or representatives, and the COMPTNY agrees not to sue the UNION, its officers or agents, for any labor matters, in any court of law or equity, and neither party will institute any proceedings before any Government administrative board or agency for any act or omission of the other party or its agents or representatives which occurs during the life of this Agreement."

"Section 15.1. PRESENTATION OF GRIEVANCES. If there is any grievance, dispute or difference between any employee covered by this Agreement and the UNION or the COMPANY or among any of

said parties with respect to the interpretation or application of any provision of this Agreement, such grievance, dispute, or difference shall be reduced to writing and processed in accordance with the following steps in this grievance procedure; provided, however, that any individual employee, or group of employees, shall have the right at any time to present verbally, or in writing, complaints or grievances to the COMPANY and to have such grievances adjusted, without the intervention of the UNION, as long as the adjustment is not inconsistent with the terms of this Agreement, and provided the UNION'S representative has been given an opportunity to be present at such adjustments. A grievance shall be negotiated in each of the following successive steps between the representatives and the parties specified in each step.

"Step 1—Between the immediate supervisor and the appropriate shop steward. The supervisor shall give the shop steward his written reply to the grievance within five (5) working days after the meeting with the shop steward. If this reply is unsatisfactory, the shop steward may appeal the decision to Step 2 provided such appeal is made within five (5) working days after the receipt of the supervisor's reply. A meeting in Step 2 shall be held within ten (10) working days after receipt by the COMPANY of notice of appeal unless a postponement is jointly agreed to by the COMPANY and the UNION.

"Step 2—Between the next level of supervision and the Chief Shop Steward. The COMPANY representative shall give his written reply within five (5) working days after the meeting with the Chief Shop Steward. If this reply is unsatisfactory, the Chief Shop Steward may appeal this reply to Step 3 provided the appeal is made within five (5) working days after the receipt of the COMPANY representative's reply. A meeting in Step 3 shall be held within ten (10) working days after receipt by the COMPANY of notice of appeal unless a postponement is jointly agreed to by the COMPANY and the UNION.

"Step 3—Between the Personnel Manager for the COMPANY at Patrick Air Force Base or his DESIGNEE and the Business Manager of the local UNION or his DESIGNEE. The Personnel Manager or his DESIGNEE shall make a reply in writing not later than ten (10) working days after meeting with the UNION'S Business Manager or DESIGNEE. If this reply is unsatisfactory, the grievance may be appealed to Step 4 provided such appeal is made within ten (10) working days following receipt of the third step reply.

"Step 4—Between the Personnel Manager of the RCA Service Company at Camden, New Jersey, or his designated representative and the International President of the IATSE, or his designated representative.

"Section 15.2. ARBITRATION. Any grievance which has not been finally settled or disposed of in accordance with the steps of the Grievance Procedure outlined above may be submitted to Arbitration within ten (10) working days of receipt of the Fourth Step reply, by either Party, under the voluntary arbitration rules then obtaining with the American Arbitration Association, except that the Arbitrator shall be selected as follows: The American Arbitration Association shall submit as soon as possible to each of the Parties, duplicate lists of the names of eleven (11) persons qualified to act. The UNION and the COMPANY shall, within the ten (10) days from the receipt of such lists, indicate the order of preference, if any, for the names on their respective lists. These lists shall be returned to the Association which shall, thereupon, select the Arbitrator from the name or names remaining. The Parties agree that the decision or award of such Arbitrator shall be final and binding on each of the Parties and that they will abide thereby, subject to such laws, rules and regulations as may be applicable. The authority of the Arbitrator shall be limited to determining questions involving the interpretation or application of specific provisions of this Agreement, and no other matter shall

be subject to arbitration hereunder. The Arbitrator shall have no authority to add to, subtract from, or to change any of the terms of this Agreement, to change any rate in the Schedule of Salary Rates or to establish a new salary rate. Each Party shall bear the expenses of preparing and presenting its own case. The cost, if any, of the Arbitrator, and the incidental expenses mutually agreed to in advance shall be borne equally by the Parties hereto. Failure to appeal a decision made in any step in the time and manner specified above shall constitute a bar to further action thereon.

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IN THE

Supreme Court of the United States

October Term, 1964

No. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

vs.

RADIO CORPORATION OF AMERICA,

Respondent.

Respondent's Brief In Opposition To Petition For A Writ of Certiorari To The District Court of Appeal, Second District Of The State Of Florida

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IN THE

Supreme Court of the United States

October Term, 1964

No. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

vs.

RADIO CORPORATION OF AMERICA,

Respondent.

Respondent's Brief In Opposition To Petition For A Writ of Certiorari To The District Court of Appeal, Second District Of The State Of Florida

---

I

QUESTIONS PRESENTED

Petitioners' Question No. 1 contains an apparent error in that it refers to enjoining employees from crossing, instead of refusing to cross, a picket line. Upon the assumption that the latter wording

was intended, Respondent's first point of argument will be concerned with the question whether state courts are pre-empted from dealing with suits to enforce no-strike clauses in collective bargaining agreements, and will be concerned with Question No. 2 as written in the Petition.

II

STATEMENT OF THE CASE

The Respondent takes exception to certain parts of the Petitioners' Statement of the Case (Petition, p. 3) and would bring additional matters to the attention of the Court at this point.

Petitioners make it appear, through statements occurring at pages 3-5 of its Statement of the Case, that Respondent sought a blanket order preventing all picketing by the Petitioners, and enjoining the mere respecting of picket lines. While Respondent does contend that the honoring of a picket line breaches a no-strike, no-picketing, no-work-stoppage agreement, the issues here were not limited to the respecting of picket lines, and no blanket restraining order was sought or granted.

If this matter had proceeded to a hearing in the trial court, the Respondent would have offered evidence that the camera repairmen and photographers were not simply honoring the film processors' picket line but were engaged in a general strike of all three groups, begun consciously and deliberately after a joint meeting and joint decision, and that the photographers and

repairmen, entirely of their own accord, engaged in the same picketing and other strike activities as did the film processors.

The record in the Florida Supreme Court, filed here by Petitioners, will show that the temporary restraining order was carefully drawn (see subparagraph (b) thereof) to permit the film processors to strike and to picket, except insofar as they might picket to induce the photographers and repairmen to strike or stop work.

Respondent further excepts to the Petitioners' statement that the District Court of Appeal refused to acknowledge the principles of federal pre-emption or the requirement that state courts follow federal law (Petition, p. 5). The District Court of Appeal's opinion (Petitioners' Appendix pp. 10a — 27a) is wholly and entirely concerned with application of these principles to the facts of this case, finding that this Court has held that state courts are proper tribunals for the enforcement of collective bargaining agreements. The District Court's opinion also shows (Petitioners' Appendix, p. 15a) that the Petitioners did not there raise the question of application of federal law by the state court, being content to urge that the state court was pre-empted from dealing with the case in the first instance. Petitioners' Question No. 2, whether the Norris LaGuardia Act, 47 Stat. 70 et seq., 29 U.S.C., Sec. 101 et seq., is a rule of substantive federal labor law to be applied by state courts handling contract cases, was not raised or briefed in the trial court or in the District Court of Appeal. The District Court of Appeal, in its opinion, gratuitously observed (Petitioners' Appendix, p. 26a) that no act of Congress expressed a limitation upon state court jurisdiction in these cases, while dis-

cussing the presence of anti-injunction statutes in some of the states, but said nothing about the obligation to apply federal substantive law.

In view of its argument as to mootness made hereinafter, Respondent deems it further necessary to point out in this Statement that the strike and contract terms dispute underlying this case were finally settled and resolved through agreement upon and execution of a new collective bargaining agreement between Local 780, in behalf of the film processors, and the Respondent (See Motion and Amended Motion To Dismiss Or Quash The Petition For A Writ Of Certiorari To The District Court Of Appeal, Second District and affidavits filed with same in the record before the Florida Supreme Court).

III

ARGUMENT

Summary of the Argument

Point A - This Court should not grant a writ of certiorari to consider Petitioners' Question No. 1, whether state courts are pre-empted from taking jurisdiction of and dealing with suits to enforce no-strike clauses in collective bargaining agreements, because the question is well settled under this Court's previous decisions.

Point B - Those courts which have considered Petitioners' Question No. 2, whether the Norris-LaGuardia Act is a rule of substantive federal labor law to be applied in contract enforcement cases by state courts, have uniformly held to the contrary and this Court has consistently declined to review these decisions.

Point C - Petitioners' Question No. 2 was not seasonably raised in the trial or appellate courts below, and is therefore not properly in issue at this time.

Point D - The interlocutory determination of the District Court of Appeal below is not a final judgment or decree within the meaning of 28 U.S.C., Sec. 1257, as interpreted by decisions of this Court, so that certiorari jurisdiction is lacking in this case.

Point E - The record in this case shows that the case is moot and presents no actual case or controversy at this time, because the dispute and strike underly-

ing this case have been finally resolved through the execution of a new labor agreement, so that certiorari jurisdiction is lacking in this case.

POINT A

This Court should not grant a writ of certiorari to consider Petitioners' Question No. 1, whether state courts are pre-empted from taking jurisdiction of and dealing with suits to enforce no-strike clauses in collective bargaining agreements, because the question is well settled under this Courts previous decisions.

In *Dowd Box Co. v. Courtney,* 368 U.S. 502 (1962), this Court has clearly determined that suits for violation of collective bargaining agreements between employers and labor organizations fall within the jurisdiction of state courts, as well as federal courts, that violations of such agreements are not unfair labor practices subject to the exclusive jurisdiction of the National Labor Relations Board, and that *Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U.S. 448 (1957), does not, as Petitioners argue, require a different conclusion.

In *Smith v. Evening News Association,* 371 U.S. 195 (1962), this Court has further held that the courts, including state courts, continue to have jurisdiction of contract enforcement cases when the subject conduct is, or may be, an unfair labor practice subject to the Board's jurisdiction, and that the pre-emption doctrine of *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236 (1959), does not apply to suits to enforce collective

bargaining agreements. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), and *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), are to the same effect.

The other cases cited by the Petitioners are not in point. *In re Green*, 369 U.S. 689 (1962), contains no holding or opinion regarding applicability of the *Garmon* doctrine to contract cases, but only a holding that an attorney held in contempt of court is entitled to a hearing and an opportunity to show pre-emption if he can.

Ex parte George, 371 U.S. 72 (1962), is concerned with a suit between parties having no contractual relationship, and was not a suit to enforce a labor contract.

The other cases cited by Petitioners, which are *General Drivers, Warehousemen and Helpers, Local Union No. 89 v. American Tobacco Company, Inc., 348 U.S. 978 (1955); Teamsters, Chauffeurs Helpers and Taxicab Drivers Local Union No. 327 v. Kerrigan Iron Works, Inc., 353 U.S. 968 (1957); McCrary v. Aladdin Radio Industries, Inc.*, 355 U.S. 8 (1957); and *Bogle v. Jakes Foundry Co.*, 363 U.S. 401, (1960), are all cases involving situations where a state court had ordered common carrier employees to continue to serve picketed companies, are per curiam opinions, and are plainly not contract enforcement suits. In each case, the employer sued persons with whom he had no contractual relationship whatever.

Inasmuch as this Court's decisions are clearly and uniformly to the effect that state courts do have jurisdiction to deal with suits to enforce collective bargaining agreements, Respondent submits that Petitioners' Question No. 1 does not warrant the exercise of certiorari jurisdiction.

POINT B

Those courts which have considered Petitioners' Question No. 2, whether the Norris-LaGuardia Act is a rule of substantive federal labor law to be applied in contract enforcement cases by state courts, have uniformly held to the contrary and this Court has consistently declined to review these decisions.

Respondent is aware that denial of certiorari in a given case is not an indication of any opinion on the merits. However, it is noteworthy that Question No. 2 raises no novel question of federal labor law, nor does it raise one that has heretofore been considered sufficiently urgent to warrant review. It is also noteworthy that the lower federal and state courts, when presented with the question, have almost without exception thought that the Norris-LaGuardia Act does not become binding upon the state courts by virtue of this court's opinion in *Textile Workers Union v. Lincoln Mills,* supra. This Court has declined to review this question in such cases as *Philadelphia Marine Trade Ass'n v. Int'l Longshoremen's Ass'n, Local 1291,* 382 Pa. 326, 115 A.2d 733, cert. denied, 350 U.S. 843 (1955); *McCarroll v. Los Angeles County District Council of Carpenters,* 49 Cal.2d 45, 315 P.2d 322 (1957), cert. denied, 355 U.S. 932 (1958); and *McLean Distributing Co. v. Brewery & Beverage Drivers, Warehousemen & Helpers, Local 993,* 254 Minn. 204, 94 N.W.2d 514, cert. denied, 360 U.S. 917 (1959).

The Circuit Court of Appeals for the Third Circuit has recently rendered a thorough and exhaustive opinion (*American Dredging Co. v. Local 25, Marine Division, International Union of Operating Engineers, AFL-CIO,* 338 F.2d 837 (1964)) holding that the limitations of Norris-LaGuardia do not extend to the states, and this Court as recently as March 8, 1965, denied a petition for

certiorari in that case (*Local 25, Marine Division, International Union of Operating Engineers v. American Dredging Co.*, Docket No. 830, cert. denied March 8, 1965, not yet reported).

The Respondent would suggest that nothing has occurred since those cases to give the question greater urgency or to cause review to be more warranted.

POINT C

Petitioners' Question No. 2 was not seasonably raised in the trial or appellate courts below, and is therefore not properly in issue at this time.

The question whether the Norris-LaGuardia Act states a rule of substantive federal labor law, which the Florida courts were obligated to apply under the holding of *Lincoln Mills*, was not seasonably raised in the trial court or in the District Court of Appeal, but was first pleaded in Petitioners' petition for certiorari to the Florida Supreme Court. Accordingly, Petitioners' Statement of the Case does not, as required by Supreme Court Rule 23 (1) (f), show that this question was properly raised at any point during trial or District Court of Appeal proceedings.

The record in the Florida Supreme Court, filed here by Petitioners, will show that Petitioners' "Motion for Dissolution and To Vacate and To Set Aside Temporary Restraining Order and To Dismiss Action" filed in the trial court on November 1, 1963, raised the pre-emption issue only. The trial court's order of dissolution and dismissal entered November 4, 1963, shows that it was based solely upon pre-emption.

The opinion of the District Court of Appeal (Petitioners' Appendix, pp. 12a and 15a) shows that the issue brought to and resolved by that court was the issue of pre-emption.

Petitioners' Statement of the Case does not assert that the Norris-LaGuardia question was raised prior to proceedings in the Florida Supreme Court, but states only that the District Court of Appeal treated both questions raised here. The apparent reference is to the court's gratuituous observation (Petitioners' Appendix, p. 26a) that no act of Congress expresses a limitation on state court jurisdiction, an observation made in the course of distinguishing cases decided under state anti-injunction acts. This simple statement that Congress has not expressly divested state courts of jurisdiction to enjoin breaches of contract hardly constitutes a treatment of Petitioners' significantly different contention that the rule of Norris-LaGuardia comes indirectly to the state courts as a rule of substanitve federal labor law within the holding of *Lincoln Mills*. Petitioners' briefs to the District Court of Appeal contained no mention of the Norris-LaGuardia Act, and presented the pre-emption issue only.

It would appear that this failure to rely upon Norris-LaGuardia below goes directly to this Court's jurisdiction under 28 U.S.C., Sec. 1257(c), since jurisdiction is there predicated upon the setting up or claiming of a right, privilege or immunity under a federal statute, and that clearly was not properly done, in regard to the Norris-LaGuardia Act, below. This Court has held, in *Michel v. State of Louisiana*, 350 U.S. 91 (1955), rehearing denied 350 U.S. 955 (1956), that a contention not raised below is not properly in issue, and the same

result has been reached in *Pennsylvania R. Co. v. Illinois Brick Co.*, 297 U.S. 447 (1936); *Beauharnais v. People of State of Illinois*, 343 U.S. 250, rehearing denied 343 U.S. 988 (1952); and *Walters v. City of St. Louis, Mo.*, 347 U.S. 231 (1954).

With regard to the belated and post-appellate presentation of this question to the Florida Supreme Court in a petition for a discretionary writ of certiorari, this Court has held that a question presented to the Florida Supreme Court, even in the context of a case clearly before the court on appeal, in a motion for rehearing, was not seasonably presented and was not before this Court on certiorari (*Hanson v. Denckla*, 357 U.S. 235, rehearing denied 358 U.S. 858 (1958)). The opinion cited *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945.)

Respondent submits that Petitioners' failure to seasonably raise the Norris-LaGuardia question below has resulted in a lack of jurisdiction in this court to consider that question, and that certiorari on Petitioners' Question No. 2 should accordingly be denied.

POINT D

The interlocutory determination of the District Court of Appeal below is not a final judgment or decree within the meaning of 28 U.S.C., Sec. 1257, as interpreted by decisions of this Court, so that certiorari jurisdiction is lacking in this case.

The opinion of the District Court of Appeal (Petition, Appendix D, page 10a) shows that the matter before that court was an "Interlocutory Appeal from the Circuit Court for Brevard County." That opinion (Petition, Appendix D, pages 12a-13a) further shows that Respondent was before the District Court of Appeal for the sole purpose of securing reinstatement of a tempor-

ary restraining order in the trial court, as distinguished from any final order, and that there had been no answer filed in the trial court or any trial or hearing there on the merits of the case. The sole effect of the interlocutory appellate order was to reinstate the temporary restraining order in the trial court at this early stage of the case, subject to the trial court's final determination of the cause (Petition, Appendix D., page 27a).

The Petitioner has taken no steps to bring this action to a final conclusion in the trial court preparatory to seeking review in this court. The record from the Florida Supreme Court, filed with the Petition, will show that the Respondent filed a motion and amended motion in the Florida Supreme Court, to dismiss or quash the petition for certiorari filed in that court. These motions were accompanied by uncontroverted affidavits of attorneys and by other exhibits (including a Motion to Vacate Notice of Dismissal filed by Petitioner in the trial court), all of which showed without dispute that the Petitioners took no steps at all in the trial court after the interlocutory appeal other than filing a motion to vacate Respondent's voluntary notice of dismissal. They thereafter failed to pursue that motion, and have never sought any hearing or action of the court upon it.

In summary, this Court is being asked to review the most conditional and temporary order that a trial court can enter, in a case which has never been brought to issue and in which no effort has been made to obtain a final and properly reviewable order.

In *Montgomery Bldg. & Const. Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178 (1952), this Court refused to review the action of the Supreme Court of Ala-

bama in upholding and refusing to dissolve a trial court's temporary restraining order enjoining picketing by labor organizations. The Court held that the express requirement of finality contained in 28 U.S.C., Sec. 1257, resolved the question and left no room for interpretation. Answering the argument that waiting for a final decree would moot the issue and frustrate the picketing, the Court observed that an interlocutory order can readily be converted into a final decree. The Petitioners here could suffer no detriment or frustration of picketing by securing a final decree before seeking a writ of certiorari, as the facts regarding mootness and any frustration of picketing or strike activity would be the same upon final decree as after termination of these interlocutory proceedings. Indeed, it is possible that the Petitioners might have prevailed in a trial on the merits, on the issue of irreparable injury or some other issue, apart from the question involved here, and might have thus become free to strike or picket while the dispute continued. In any event, there is at this time no reason why the requirement of finality should be dispensed with, in terms of any urgent need, or even any desire, to resume striking or picketing.

The dissent in the *Montgomery* case placed emphasis upon the desirability of an early decision, apparently upon the assumption that the labor organizations involved in that case would still wish to resume picketing after the certiorari proceeding. That, of course, would not be true in the present case, which involved a sympathy strike and picketing in support of contract negotiations which are now concluded.

Admittedly, the holding in the *Montgomery* case has been modified by this Court's later decision in *Local No.*

438, Construction & General Laborers Union, AFL-CIO v. S. J. Curry, 371 U.S. 542 (1963). The Respondent submits, however, that *Curry* does not obliterate the rule stated in *Montgomery,* but only denies its application to cases containing the factors present in *Curry,* described by this Court as being a small class of cases.

As opposed to *Curry,* the present case is a contract enforcement action, and is therefore clearly within the jurisdiction of state courts, according to the cases cited under Point A, apart from the question of what relief the state court, applying federal law, may grant. There is no valid claim here that the state court was without jurisdiction to deal with this case. The remaining claim is that the Norris-LaGuardia Act is a rule of substantive federal law which the state court was obliged to apply in this case in determining Respondent's entitlement to injunctive relief. There is no contention that the Norris-LaGuardia Act was in the first instance a direct federally imposed limitation upon state court jurisdiction. Rather, the claim is that Norris-LaGuardia's prohibition comes indirectly to the state courts via the *Lincoln Mills* rule requiring the application of "substantive principles of federal labor law."

According to the *Curry* opinion, this Court granted certiorari to review an interlocutory order in that case because the issue was not, as it is here, "whether a [Florida] court has erroneously decided a matter of federal law" in a case within its jurisdiction, but was whether the state court had erroneously asserted its ju-

isdiction "to deal with" a controversy beyond its power and within the exclusive domain of the National Labor Relations Board (*Curry*, 371 U.S. 542, at 548).

Nor is this a case of separately litigated issues, as in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), cited in *Curry*. Indeed, up to this point, the question of Norris-LaGuardia's being applicable to the case as a rule of substantive law has not been litigated at all, due to the Florida Supreme Court's denial of certiorari, as shown under Point C herein.

Denial of certiorari here would not, as the Court said in *Curry*, leave the Petitioners subject to unlawful restraint during further proceedings to secure a final order, or result in rendering illusory any rights they may have, thereby permitting any erosion of federal labor policy or Labor Board jurisdiction, because the contract dispute underlying this case is over, unlike the prevailing wage dispute in *Curry*, which would presumably continue indefinitely, and there is no Labor Board jurisdiction to be eroded.

Neither is this a case such as *Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379 (1953), also referred to in *Curry*, in which a state supreme court's overruling of a demurrer, equivalent to the issuance of a temporary injunction in the trial court, was held sufficiently final to come within 28 U.S.C., Sec. 1257. In that case, the petitioning employee had in fact raised and litigated, in the trial court and on appeal, his claim that the Federal Employers' Liability Act precluded his being enjoined. As has been previously pointed out, Petitioners here have not seasonably raised or litigated the Norris-LaGuardia issue in the trial court or District Court of

Appeal. In the language of *Pope*, this issue is not "in fact ripe for adjudication" (345 U.S. at 382).

Nor is this a case presenting the other factors present in *Pope* which were emphasized there and in *Curry* by this Court, namely, that the petitioner there had no further factual or legal issues to present to the trial court, and freely conceded that he had none, and that the merits of the issues had already been raised and resolved in a hearing on the temporary injunction.

The question of irreparable injury has not been decided on the merits, and it is not possible, in the present state of the record, to say what the other factual issues would have been if Petitioners had filed an answer or had there been a hearing to determine whether a temporary or permanent injunction should issue. Certainly, it would be wholly premature and speculative to say now that there were no factual issues between the parties.

With regard to unresolved legal issues, it is immediately apparent that the very issue upon which review is sought, whether Norris-LaGuardia is a rule of substantive federal labor law to be applied by state courts, remains unresolved in the trial court and in the District Court of Appeal. The existence of irreparable injury, justifying an injunction as opposed to damages, is a legal issue as well as a factual one. The Petitioners do not concede, as in *Pope*, that they do not have such defenses to offer in the state court, and, indeed, it is not within their power to make such a concession, which would involve predicting the minds and opinions of the trial and appellate judges. After the interlocutory appeal, it could not

be said here, as this Court said in *Pope*, that nothing remained to be done but the mechanical entry of judgment by the trial court.

Respondent submits that the requirement of 28 U.S.C., Sec. 1257, as to finality is not satisfied in this case.

POINT E

> The record in this case shows that the case is moot and presents no actual case or controversy at this time, because the dispute and strike underlying this case have been finally resolved through the execution of a new labor agreement, so that certiorari jurisdiction is lacking in this case.

When the Petitioners petitioned the Florida Supreme Court for a writ of certiorari to the District Court of Appeal, the Respondent moved to dismiss the petition because the case had become moot at that time. With its motion and amended motion to dismiss, Respondent filed affidavits showing that the dispute between the parties had expired due to the signing of a new labor agreement, and that no controversy remained. Thereafter, the Florida Supreme Court denied certiorari per curiam, possibly because of the absence of any continuing case or controversy. These matters will appear in the Florida Supreme Court record filed by Petitioners.

The decisions of this Court show that it too declines to give opinions upon moot questions or abstract propositions (*Mills v. Green*, 159 U.S. 651 (1895)), and that it does not decide arguments after events have put them to rest (*Doremus v. Board of Education of Borough of Hawthorne*, 342 U.S. 429 (1952)), because such questions present no actual case or controversy and are there-

fore actually beyond the limit of the Court's function (*Local No. 8-6, Oil, Chemical & Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363 (1960).

The decision in *Local No. 8-6*, above, would appear to be dispositive of the present Petition. In that case, a union sought review of a state court judgment enjoining a strike against a public utility which had been seized and operated for a time by the state. As in this case, the strike enjoined was in support of contract negotiation demands, although not in breach of a no-strike clause. Observing that the dispute had resolved itself and terminated due to the execution of a new labor agreement, this Court found the case moot and unreviewable. The Court considered the argument that a refusal to review might result in a repetition of allegedly unconstitutional activity, but rejected that argument as being insufficient to justify review of a moot case, observing that the same contention had been made and rejected in *Harris v. Battle*, 348 U.S. 803 (1954) and in other cases. Indeed, if the likelihood of future erroneous decisions by state courts were enough to justify review of a moot case, it would seem that the rule requiring an actual, live case or controversy would be wholly vitiated, for the likelihood of similar decisions by the same court in future cases is always present.

It appears to the Respondent that the present case is even more clearly moot than *Local No 8-6* was. In *Local No. 8-6*, the union was at the time being sued for monetary penalties under the state statute being attacked, and the returned strikers continued to be subject to loss of seniority rights under the seizure statute, so that the case had some aspects of a live controversy. Even so, this Court refused to anticipate the outcome of the suit

for monetary penalties, or to assume an unlikely deprivation of seniority rights, but observed that those cases, if and when they developed, could be brought to this Court independently and as live cases.

The dissent made in *Local No. 8-6* would not apply, in any of its parts, to the present case. The dissent emphasized the continuing liability of the union and its members for monetary penalties and loss of seniority, the fact that the state supreme court had treated the case as being alive, and the belief of the dissenting Justices that the question was one of state court jurisdiction. In the present case, there is no related litigation or any prospect of any, and no question of punitive action against employees. Nor has the state court treated the case as other than moot. The new contract was signed after the District Court of Appeal proceeding, and the Florida Supreme Court refused to take the case after the dispute was settled. Further, the question here does not arise in the context of a state court's acting entirely outside its jurisdiction and encroaching upon that of the National Labor Relations Board, the question being whether the court, acting within its jurisdiction, should apply the Norris-LaGuardia rule as a rule of substantive federal law.

This Court has impliedly recognized the continuing validity of *Harris v. Battle* and *Local No. 8-6* in its more recent opinion in *Division 1287, Amalgamated Ass'n of Street, Electrical Railway and Motor Coach Employees of America v. Missouri*, 374 U.S. 74, rehearing denied 375 U.S. 870 (1963), in distinguishing that case from the earlier two for the reason that the underlying labor dispute in *Amalgamated* was continuing and unresolved at the time when review was sought.

The present status of *Harris* and *Local No. 8-6* is admittedly rendered somewhat unclear by this Court's opinion in *Liner v. Jafco, Inc.*, 375 U.S. 301 (1964), where the Court reviewed a state court injunction against a union's picketing of a construction site in protest of wage levels, although the construction was completed when review was sought.

Neither *Harris* nor *Local No. 8-6* was mentioned or distinguished in *Liner*, but a comparison of these cases and the present case leads to the conclusion that *Liner* should not apply to the present case.

While the Court, in *Liner*, cited the possibility of an action by the union for wrongful injunction as giving its decision a present right upon which to operate, it is not at all clear from the opinion that this circumstance standing alone would have been sufficiently substantial and likely to happen to warrant a review. Whether the union would ever think it worthwhile to bring such an action is speculative and problematical, especially in view of the probability that only nominal damages would be recoverable since the union, in such cases, suffers no property damage or loss of money, but instead suffers the loss of an alleged right, the value of which is not measurable in money.

It seems more likely that the factors in the *Liner* case which justified review despite the completion of the particular construction in question, were the fundamental danger of state interference with and erosion of national policy by operating at all times without jurisdiction to do so and in a federally pre-empted area, and the fact that the union there was asserting a continuing right to picket a contractor generally, as shown by foot-

note 5 to the opinion, rather than a right simply to picket a particular job, until he should raise wages paid by him, so that the wage level dispute giving rise to the case was in fact continuing at the time of review and was not actually moot.

By way of comparison, the Petitioners here sought only a right to picket and strike in support of a definitive dispute over the terms of a new contract for one group. That dispute was forever terminated upon an agreement being reached and signed, and cannot in any way be revived.

Respondent submits that the present case, being a contract enforcement case, is clearly not within that class of general picketing cases represented by *Liner*, nor attended by the same considerations regarding the integrity of Labor Board jurisdiction or danger to federal policy, and that the principles of *Harris* and *Local No. 8-6* should apply to preclude review of the case for mootness.

IV

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court and that the petition for a writ of certiorari should be denied.

Dated March _____, 1965.

WILLIAM A. GILLEN

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Brief In Opposition To Petition For A Writ Of Certiorari was this day served upon the Petitioners herein by depositing the same in a United States Post Office mail box, with air mail postage prepaid, addressed to Bernard M. Mamet, Esq., Suite 1326, 327 La Salle Street, Chicago, Illinois 60604, Counsel of Record for Petitioners. Dated March _____, 1965.

WILLIAM A. GILLEN

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

vs.

RADIO CORPORATION OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District of the State of Florida

PETITIONERS' REPLY BRIEF

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Cases

American Dredging Co. v. *Local 25, Marine Division, International Union of Operating Engineers, AFL-CIO*, 338 F. 2d 837 (1964), cert. denied, March 8, 1965, Docket No. 830 7

Bailey v. *Hayman's*, 73 Fla. 1191, 76 So. 135 (1917) .. 6

Davis v. *Stroyle*, 39 So. 2d 468 (1949) 4

Garner v. *Teamsters*, 346 U. S. 485 (1953) 8

Gross v. *United States Mortgage Company*, 108 U. S. 477 (1883) 3

Indiana ex rel Brand v. *Anderson*, 303 U. S. 95 (1938) 3

Liner v. *Jafco, Inc.* 375 U. S. 301 (1964) 6

Local 174 Teamsters v. *Lucas Flour Co.*, 362 U. S. 95 (1962) 7

Local No. 438 Construction - General Laborers' Union v. *S. J. Curry, et al.*, 371 U. S. 542 (1963) 4

Manhattan Life Ins. Co. of New York v. *Cohen*, 234 U. S. 123 (1914) 3

McCarroll v. *Los Angeles County District Counsel of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. denied*, 355 U. S. 932 (1958) 7

McLean Distributing Co. v. *Brewery & Beverage Drivers, Warehousemen & Helpers, Local 993*, 254 Minn. 204, 94 N. W. 2d 514, *cert. denied*, 360 U. S. 917 (1959) 7

Murdock v. *Memphis*, 20 Wall. 590 (1875) 3

National Surety Co. v. *Willys-Overland, Inc.*, 103 Fla. 738, 138 So. 24 (1931) 6

New Amsterdam Casualty Co. v. *Utility Battery Mfg. Co.*, 122 Fla. 718, 166 So. 856 (1935) 6

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Raley, et al. v. *Ohio*, 360 U. S. 423 (1959) 3

Savage v. *Horne*, 49 So. 2d 329 (1950) 4

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Whitney v. *California*, 274 U. S. 357 (1927) 3

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Wittich v. *O'Neal*, 22 Fla. 592 (1886) 6

Statutes

Florida Annotated Statutes, Sec. 64.16 6

Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C., 101 *et seq.* 1, 2, 3, 4, 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 940

LOCAL 780, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, by and through JONATHAN R. REYNOLDS, its business agent and representative, and LOCAL 666, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES OF THE UNITED STATES AND CANADA, AFL-CIO, by and through ARTHUR W. BEEMAN, its business agent and representative,

Petitioners,

VS.

RADIO CORPORATION OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District of the State of Florida

PETITIONERS' REPLY BRIEF

Petitioners, in their petition, have challenged the jurisdiction of the Florida court to restrain employees from respecting a peaceful primary picket line. In support of their petition, they point to the doctrine of federal pre-emption in picketing cases and the provisions of the Norris-LaGuardia Act, (47 Stat. 70 *et seq.*, 29 U. S. C. § 101 *et seq.*) limit-

ing the powers of courts to issue injunctions in labor disputes, which Act, they contend, is part of a federal body of labor law applicable to state courts. Respondent, while contending state courts have the power to issue injunctions in labor disputes, challenges the jurisdiction of this Court to review the state court's determination. To the extent that Respondent raises matters not treated in our Petition, some brief comment will be made.

Raising of Federal Question Below

Respondent contends that Petitioners' second question (applicability of Norris-LaGuardia Act) was not seasonably raised below and is therefore not properly before this Court. Respondent is in error. The question was litigated before the District Court of Appeal (the last Florida tribunal to express an opinion) and the Court not only expressly decided the question but went to great lengths to express the basis for its holding. Hence, relying upon state court cases[1] which this Court declined to review, the Florida court stated that "Numerous other state courts have sustained their right, jurisdictionally, to utilize injunction against a strike and picketing for breach of a collective bargaining agreement." (Pet., App. D, p. 25 a). And, the Florida Court relying upon a Maryland case [2] noted that "state courts which have permitted injunctions for breach of an existing labor agreement generally are either in states having no anti-injunction statute, such as California and Ohio, or where, as in Minnesota and Pennsylvania, there is express statutory exemption of breaches of collective bargaining agreements

1. See Footnote 5, Court of Appeal Decision, Pet., App. D, p. 25 a.

2. *Tidewater Express Lines* v. *Freight Drivers, etc.*, 230 Md. 450, 187 A. 2d 685, 688 (1963).

from the coverage of anti-injunction statutes." (Pet., App. D, pp. 25a-26a)[3] Significantly, in aid of its position that certiorari should not be granted, Respondent states that this Court has, on at least four different occasions, denied review of the exact question presented in our Question 2, citing the identical cases cited by the District Court of Appeal in its decision. (See Resp. Brief, p. 8). How then can Respondent contend that the question was not considered?

"Insofar as Florida is concerned," stated the Florida court, "there is no interdiction, either by statute or through any decision of our Supreme Court which curtails jurisdictional power of the state court to entertain a proceeding such as this; nor, as to the subject matter here involved, does any act of Congress which may be restrictive as to federal court jurisdiction express such a limitation upon jurisdiction of a state court." (Pet., App. D, p. 26a). Obviously, the question was considered and decided and it is an "elementary rule that it is irrelevant to inquire how and when a Federal question was raised in a (state) court . . . when it appears that such question was actually considered and decided." *Manhattan Life Ins. Co. of New York* v. *Cohen*, 234 U. S. 123, 134 (1914). *See also, Indiana ex rel Brand* v. *Anderson*, 303 U. S. 95, 98 (1938) and *Raley, et al.* v. *Ohio*, 360 U. S. 423, 436-437 (1959). And, of course, the opinion of the state court is part of the record for the purpose of determining whether a federal question has been raised. *Murdock* v. *Memphis*, 20 Wall. 590, 633 (1875); *Gross* v. *United States Mortgage Company*, 108 U. S. 477, 485-486 (1883); *Whitney* v. *California*, 274 U. S. 357, 361-362 (1927).

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3. Significantly, the Court in *Tidewater* stated that it felt its decision was controlled by the Maryland anti-labor injunction statute, Code (1957), Art. 100, Sec. 65, which is patterned after Section 4 of the Norris-LaGuardia Act, 29 U. S. C. 104.

Final Judgment

Respondent attacks the jurisdiction of this Court, contending that its judgment below was not a final one within the meaning of 28 U. S. C. § 1257. Yet, the Florida court specifically held that "Absent a congressional or state enactment or a judicial pronouncement by the United States Supreme Court or the Florida Supreme Court to the contrary, jurisdiction of the state court is not divested." (Pet., App. D, p. 26a). Thus, the Florida court asserted its jurisdiction to deal with a controversy beyond its power and this assertion was final, subject to no further state review after the Supreme Court of Florida had denied certiorari. See *Tampa Water Works Co.* v. *Wood,* 104 Fla. 306, 312-313, 139 So. 800 (1932); *In re Wilkins' Estate,* 136 Fla. 86, 88, 186 So. 826 (1938); *Savage* v. *Horne,* 49 So. 2d 329, 330 (1950); and *Davis* v. *Strople,* 39 So. 2d 468, 469 (1949).

Petitioners' entire argument below revolved around the absence of jurisdiction in the state court. Whether the question of jurisdiction is approached from the standpoint of federal preemption or from the applicability of Norris-LaGuardia, Petitioners contend that the state court was without power. And, the state court ruled that it had such power notwithstanding federal preemption or Norris-LaGuardia. Irrespective of the merits, such determination was final and binding and with this even Florida would agree, as reflected in the cases cited above. The federal question presented here is whether the Florida courts had the power to issue its injunction. And, as this Court held in *Local No. 438 Construction & General Laborers' Union* v. *S. J. Curry, et al.,* 371 U. S. 542, 548 (1963) "Whether or not the (state) courts have power to issue an injunction is a matter wholly separate from and independent of the merits of respondents' cause." In *Curry,* this Court held that it had jurisdiction

to review on certiorari the judgment of the Supreme Court of Georgia reversing the denial by the trial court of a temporary injunction—precisely the situation here. The Court pointed out that "There is no doubt that the jurisdiction of the Georgia courts has been finally determined by the judgment below and is not subject to further review in the state courts." Here, no less than in *Curry*, the embracing of Respondent's position would seriously erode the national labor policy, render entirely illusory Petitioners' right of review and effectively dispose of any rights Petitioners may have.

Alleged Mootness

Having secured its order below and judicially coerced employees to cross the picket line and other employees from inducing fellow employees to respect the picket line,[4] Respondent has nothing more to achieve and hence now contends that the matter is moot.[5] This, like the other contentions of Respondent, reflects the "hit and run" aspects of re-

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4. Respondent takes exception in its brief (p. 2) to statements in Petitioners' Statement which "make it appear . . . that Respondent sought a blanket order preventing all picketing by the Petitioners, and enjoining the mere respecting of picket lines." Respondent contends that no blanket order was sought or granted and that it was not seeking an injunction limited to the respecting of picket lines. With respect to the first point, we cannot see how paragraph 1 and sub-paragraph a of the Temporary Restraining Order (Pet., App B, p. 6 a) can be interpreted in any other way than a blanket order. With respect to the second point, we will not quibble with Respondent over whether it sought to restrain only the respecting of picket lines or that plus something more. It is sufficient to come within the ambit of the preemption doctrine that Respondent admittedly sought to restrain employees from respecting a picket line established at their own place of employment.

5. Respondent states that the dispute between the parties had expired due to the signing of a new labor agreement (Brief, p. 17). Respondent failed to note, however, that the new agreement expired on October 6, 1964, and no new agreement has yet been consummated.

straining orders in labor disputes, particularly in areas where there is a lag in accepting the principles of our national labor policy. The reasons for this Court assuming jurisdiction are as cogent here as they were in this Court's decision in *Liner* v. *Jafco, Inc.*, 375 U. S. 301 (1964). Here, too, has Respondent posted an indemnity bond (Pet., App. B, p. 7a; See Notation, Rec. 24). Contrary to Respondent's assertions (Brief p. 20) more than nominal damages were suffered by Petitioners and more than nominal damages are recoverable under Florida law under an injunction bond in view of Florida's allowance of attorney's fees [6] (See *National Surety Co.* v. *Willys-Overland, Inc.*, 103 Fla. 738, 741, 138 So. 24, 25-26 (1931); *Wittich* v. *O'Neil*, 22 Fla. 592, 600 (1886); *Bailey* v. *Hayman's*, 73 Fla. 1191, 1192, 76 So. 135, 136 (1917); *New Amsterdam Casualty Co.* v. *Utility Battery Mfg. Co.*, 122 Fla. 718, 725, 166 So. 856, 859 (1935). Such damages are recoverable under Florida law on the bond in the same action upon the dissolution of the injunction. Florida Annotated Statutes, § 64.16. Moreover, separate and apart from the question of the indemnity bond, the federal question presented here, as in *Liner*, revolves around the power of state courts to issue injunctions resulting in the frustration of our national labor policy and the denial of federally protected rights of party litigants. Such federal question has not been mooted.

As pointed out in our original brief, the Florida District Court of Appeal directed the employees to cross the picket line established by their fellow employees, or to quit. This was within its power, stated the Florida court, and "Absent a congressional or state enactment or a judicial pronouncement by the United States Supreme Court or the Florida

6. Local counsel were employed not only in Brevard County, Florida, but in Miami, Florida, as well.

Supreme Court (which refused certiorari) to the contrary, jurisdiction of the state court is not divested." (Pet., App. D, p. 26a). And, absent a pronouncement from this Court, as the Florida court states, a plaintiff in the Florida courts will be able to secure injunctions, while the same plaintiff would be denied an injunction in a federal court in the same state. Moreover, the statement by knowledgeable counsel that this Court's denial of certiorari in pre[7] *Lucas Flour*[8] and *Sinclair Refining Co.* v. *Atkinson*[9] cases of one of the same questions (Norris-LaGuardia) presented herein was "noteworthy" (Resp. Brief, p. 8), gives rise for further alarm. The denial of certiorari in earlier cases coupled with the instant and other state court decisions leads Respondent's counsel to the conclusion that the power of a state court in granting injunctions revolves around the whim of the state but that the contrary is true as regards federal courts.[10] And, if counsel's thinking represents even a par-

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7. *Philadelphia Marine Trade Ass'n* v. *Int'l Longshoremen's Ass'n, Local 1291*, 382 Pa. 326, 115 A. 2d 733, *cert denied*, 350 U. S. 843 (1955); *McCarroll* v. *Los Angeles County District Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322 (1957), *cert. denied*, 355 U. S. 932 (1958); and *McLean Distributing Co.* v. *Brewery & Beverage Drivers, Warehousemen & Helpers*, Local 993, 254 Minn. 204, 94 N. W. 2d 514, *cert. denied*, 360 U. S. 917 (1959).

8. *Local 174 Teamsters* v. *Lucas Flour Co.*, 362 U. S. 95 (1962).

9. 370 U. S. 195 (1962).

10. Respondent also cites *American Dredging Co.* v. *Local 25, Marine Division, International Union of Operating Engineers, AFL-CIO*, 338 F. 2d 837 (1964), *cert. denied* March 8, 1965, Docket No. 830 (Brief, pp. 8-9) and implicitly represents to the Court that the issue involved therein was whether the Norris-LaGuardia limitations extend to the states. Respondent is in error. The only issue before the Court in that case was the following:

> Does Federal court's original jurisdiction under Section 301 of Taft-Hartley Act over suits for breach of collective bargaining agreements permit removal of state court suit for injunction against strike in violation of no-strike clause? (Emphasis supplied)

tial consensus of the bar, not only will this create disparity of result between federal and state forums, but even from state to state the results will vary, as evidenced by the District Court of Appeal decision (notably its fn. 5 and its discussion in text circa thereof, Pet., App. D, p. 25a). Add to this the fact that some states have little Norris-LaGuardia Acts [11] while others do not (not to mention the separate state by state interpretation), and the product is a heterogeneous conglomeration of varying results where uniformity is essential if a federal national policy is to prevail. Viewed then in the overall framework and perspective of the regulation of labor matters, this case presents serious and compelling issues, the resolution of which is necesary to clarify the interplay of state and federal powers which this Court has so carefully developed since *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448 (1957) and *Garner* v. *Teamsters*, 346 U. S. 485 (1953). This case cuts across not only the question specifically ruled upon as regards federal courts in *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962), but presents the basic issue of federal preemption, as well, because it deals with peaceful picketing, the right to respect a picket line at one's own place of employment (or at least the right

11. The following states and territories have statutes prohibiting the granting of injunctions: Arizona, Connecticut, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, Wisconsin, and Wyoming. Many of these statutes, like that of Maryland and Indiana, are patterned after, or copied from, the Norris-LaGuardia Act. Others, such as those of Illinois and Montana, are much less complete, setting forth little more than a statement of policy.

to have the NLRB make the initial determination) and the right to peaceably induce such respect.

Respectfully submitted,

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April 6, 1965.